

Appl. No.: 09/858,415  
Amdt. dated: 6/13/2005  
Reply to Office Action of January 12, 2005

### **REMARKS**

Upon entry of the instant amendment, claims 1-6 are pending. Claims 1-6 have been amended to more particularly point out the applicant's invention. It is respectfully submitted that upon entry of the instant amendment, the application is in condition for allowance.

### **CLAIM REJECTIONS – 35 U.S.C. § 103**

Claims 1-6 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Janik, et al. U.S. Published Patent Application US 2002/0164973 A1, in view of Ross et al., U.S. Published Patent Application US 2002/0132616 A1. It is respectfully submitted that the claims, as amended, recite subject matter clearly not disclosed or suggested by either the Janik, et al. or Ross, et al. references, either singly or in combination. In particular, the claims, as amended, recite a wireless communication system which includes a plurality of digital audio players, which include a wireless communication platform for communicating with a content host as well as one other digital audio play. The claims also recite automatic synchronization of the digital content between communicating digital audio content between devices.

The applicant agrees with paragraph 1 of the Detailed Action that the Janik, et al. reference does not disclose a system for communicating between digital audio players. In fact, the Janik, et al. system includes a system where each of the digital audio players can only communicate with a content host. The Examiner's attention is directed to Fig. 1 of the Janik, et al. reference. As clearly shown in Fig. 1 of the Janik, et al. reference, two digital audio players,

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both identified with the reference numeral 42, communicate over a wireless link with a access point.

In support of a rejection, the Official Action states that: *"It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the Ross teachings in modifying the Janik's digital audio devices by adding the capability of establishing communication links between the devices for the advantage of allowing devices to share stored contents with each other, as well as reducing the work load for the host."* The Ross, et al. reference discloses a file sharing network wherein a first user can identify desired content and the audio player device searches for other players which match the user preferences for digital content and downloading that content when another digital player device is located with the desired content. The file sharing system disclosed in the Ross, et al. reference is clearly set forth in paragraph [0021] and Fig. 6 of the Ross, et al. reference.

The system recited in the claims at issue is different in that the digital content between digital audio devices in range of each other are synchronized automatically. In other words, the system does not need to search for other users with content which matches a user preference profile. The system simply searches for other digital audio devices in range. In other words, the system, in accordance with the present invention, simply searches for other audio devices in range without concern for the content. In accordance with the present invention, the digital content is automatically transferred when a second user is within range of the first user.

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In contradistinction, the system disclosed in Ross not only checks for other users in range, but must also check the content to determine whether the content of the other user coming into range meets the user preference profile of the first user. As such, it should be clear that the systems are different.

Moreover, it is respectfully submitted that § 2143 of the MPEP sets forth three criteria that must be met in order to establish a *prima facie* case of obviousness. *"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations ... the teaching or suggestion to make the claim combination and the reasonable expectation of success must be found in the prior art, not in the applicant's disclosure."*


It is respectfully submitted there is absolutely no motivation in either of the Janik, et al. or Ross, et al. patents to combine the teachings of these references. If anything, these references teach away from combination with each other. Indeed, the Janik, et al. patent discloses a wireless communication network which includes a plurality of mobile communication devices which can only communicate wirelessly with a central access point. The Janik, et al. disclosure does not disclose or suggest communication between the mobile devices. The Ross, et al. reference, on the other hand, discloses a wireless communication device which includes a number of mobile communication devices which are able to communicate with one another.

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There is no teaching or suggestion to combine the teachings of these references. Moreover, no reasonable expectation of success has been shown. In addition, neither of the references disclose, teach, or suggest all of the claim limitations of the claims as currently amended. For example, none of the references disclose a system for automatically synchronizing content of two devices when the two devices come in range of each other.

Respectfully submitted,

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